

**Zoning Board of Adjustment
1200 Mountain Ave., Middlesex, NJ 08846
Agenda Meeting Minutes
March 18, 2015
7:30 PM**

1. Call to Order

Chairperson DiMura called the meeting to order at 7:33pm.

2. Open Public Meeting Act Statement

Chairperson DiMura read the Open Public Meeting Act Statement.

3. Roll Call

Upon the call of the roll the following members were present:

John Anello Dec/2016 [present]	Guy Hoyt Dec/2017 [present]
Ron DiMura Dec/2017 [present]	Anthony Thompson Dec/2018 [present]
Phil Lopa Dec/2015 {present]	Anthony Vietri Dec/2015 [present]
Joseph McNulty Dec/2016 [absent]	Sean Johnson Dec/2015 [present]

Also present were Ms. Dowling, Board Attorney and Mr. Uzo Ahairakwe, Board Planner.

4. Minutes

Member Thompson made a motion to approve the minutes from the February 18, 2015 meeting, seconded by Member Anello. Vote: Member Anello-yes, Member Hoyt-abstain, Chairperson DiMura-yes, Member Vietri-yes, Member Lopa-abstain, Member Thompson-yes, Member Johnson- yes . Motion passed.

5. New Business

Z2015-01

MBKS, LLC

102 South Ave.

Block 287 Lot6

Interpretation

Ms. Dowling explained to the Board Members that interpretation was filed to have the Zoning Board to determine if the applicant's use of the properties was within the perimeters of the Certificate of Continued Occupancy that was issued years ago. Ms. Dowling stated that Middlesex Borough does not have an Ordinance that refers to the Zoning Board to review Certificates of Continued Occupancy. The Board cannot do that

but the Board can interpret a zoning ordinance to see if the use is "permitted" in the zone as per the NJ Statute 40:55 D.

The Board will determine if the use is permitted in the zone.

Mr. Bob Zoller will be representing Mr. Sowden of Richies's Tires.

Mr. Zoller gave a background of the operations: from 1987 to 2000 Mr. Sowden was located at 125 South Ave in which he used a parcel of land that was leased to him by Conrail. When he could no longer use this land he moved 107 Egel and purchased 102 South Ave (which is located behind 107 Egel Ave.) for his business.

Mr. Zoller explained that Richie's Tires is a tire recycling business and trailers that are at 102 South Ave are used to store the tires due to regulations that tires are not allowed to be stored outside. Those trailers are located at 102 South Ave. When the trailers are full then the trailers are moved and are not permanently stored at that site.

Mr. Zoller stated that the local ordinance provides for storage of materials in this zone. Mr. Zoller explained that trailers are used as part of the business for Richie's Tires and will have testimony from Scott Luthman former Zoning Officer who had signed the Certificate of Continued Occupancy.

Mr. Zoller stated in October 2014 Mr. Sowden was issued tickets for operating a truck depot and outside storage, which is not permitted in this zone.

Ms. Dowling duly swore in Richard Sowden, 393 Jaguar Lane, Bridgewater NJ.

Mr. Sowden described his business as tire recycling. Mr. Sowden stated that he first operated out of 125 South Ave (from 1987 to 2000). Mr. Sowden stated that his business picks up tires from gas stations and car dealerships and collects tires. The tires are then put into the trailers. Then the full trailers are brought to the County. The County then chips and shreds the tires.

Mr. Sowden also provides road service, he might tow them to his site or a different site.

Mr. Sowden stated that he first used 125 South Ave to run both businesses. The recycling of tires uses the trailers as part of the business. Mr. Sowden stated that he first used the property leased by Conrail for the trailers. This property was adjacent to this property. Mr. Sowden stated that he could have 12 to 15 trailers, that this varies daily.

Mr. Sowden stated that Conrail property was sold. He then moved his business to 107 Egel Ave and 102 South Ave. and had contacted Mr. Luthman from the Borough regarding this.

Member Lopa questioned if Mr. Sowden received a Certificate of Continued Occupancy.

Mr. Sowden stated that he did receive a Certificate.

Ms. Dowling stated that the purpose was to discuss 102 South Ave.

Chairperson DiMura clarified that in 2000, Ritchie's Tires purchased 102 South Ave and 107 Egel Ave at the same time.

Mr. Sowden explained that 102 South Ave backs up to 107 Egel Ave., that this property does not have a building on it, and the front of the property is open, there is no fence between the properties, 107 Egel has the office on it.

Mr. Sowden stated that he walked the property with Mr. Luthman and there were oil tanks on the property and that the owner he was purchasing from would have to remove these oil tanks. Mr. Sowden stated that at any time this owner would have between 10 to 12 tanker or tractor trailer trucks at a time on the property.

Member Lopa questioned if this property was ever cleaned up.

Chairperson DiMura questioned Mr. Sowden if he would describe this prior use as a truck depot.

Chairperson DiMura stated that he felt this prior use was a truck depot.

Mr. Sowden stated how he would be using the property as truck parking and stated to Mr. Luthman that the tanks would have to be removed. Mr. Sowden stated that Mr. Luthman informed him that he would have to do so homework regarding this property.

Member Lopa questioned how Mr. Luthman could have issued a Certificate if the site was not cleaned up.

Mr. Sowden stated that a Certificate of Continued Occupancy was issued for 102 South Ave.

Mr. Zoller stated that there was a Certificate of Continued Occupancy issued for 102 South to the prior owner as a tank storage yard.

Ms. Dowling questioned who the prior certificate was issued to.

Mr. Zoller stated that the prior Certificate was issued to the prior owner Mr. Colaluca.

Ms. Dowling questioned what was the “purpose of” that was listed on the Certificate of Continued Occupancy dated April 15, 1998.

Mr. Zoller stated that the Certificate states for the purpose of tank storage.

Ms. Dowling questioned what was “the purpose of” listed on the Certificate of Continued Occupancy dated June 1, 2000.

Mr. Zoller stated that the Certificate stated for the purpose of a storage yard.

Mr Zoller stated that the zoning ordinance in 2000 allowed for storage and would have Mr. Luthman testify how he applied the ordinance.

Ms. Dowling stated that the contractor's equipment or storage yards were permitted.

Mr. Zoller stated that the Certificate of Continued Occupancy issued July 16, 1981 was issued for the purpose of a storage yard.

Mr. Zoller marked the 3 Certificates of Continued Occupancy from 1981, 1998 and 2000 for 102 South Ave as Exhibit A1 (3-18-15) and handed the Exhibit to the Board Clerk and copies to all Board Members.

Member Thompson questioned the tickets that were issued to him.

Ms. Dowling stated that the Board was to interpret the ordinance only.

Mr. Zoller reviewed with Mr. Sowden his conversation with Mr. Luthman moving across the street.

Mr. Sowden stated that he did have the same use as the location of 125 South Ave, that there were the same amount of trailers at 102 South Ave as there was at 125 South Ave. and never had any issues

Chairperson Dimura referred to the 2000 Continued Occupancy document that the words parking lot was crossed off by Mr. Luthman .Ms. Dowling stated that the application was applied for on his behalf from the prior owner.

Mr. Zoller stated that the prior owner filled out the application.

Ms. Dowling stated that the applicant applied for one thing and then received an Certificate for something else.

Mr. Zoller stated that the prior use had been for storage and provided Aerial photographs from 1953 to 2007 that show storage tanks on the property.

The package of aerial photographs tabbed A- H was entered as Exhibit A2.

Mr. Zoller stated that the prior certificates show that the property had been used to store tanks.

Ms. Dowling and Mr. Zoller debated the use of the photographs.

Member Anello stated that the Certificates of Continue Occupancy were issued for tank storage and not storage facility even though the use was not permitted and these are two different items.

Mr. Zoller questioned Mr. Sowden if he had spoken to any other property owners regarding the use of trailers and tractors on their property.

Member Lopa stated that these could be legal or not legal, can't rely on other properties, and have to go by what you have.

Mr. Zoller questioned Mr. Sowden as to how the property at 107 Egel Ave office interacts with 102 South Ave.

Mr. Sowden stated the ties go directly to the site at 102 South Ave. that they do not go to 107 Egel Ave.

Mr. Sowden stated that 107 Egel Ave. is the office that does the billing and 102 South Ave. is used in the collection of recycling tires.

Mr. Zoller questioned Mr. Sowden if he had been designated as a recycling center.

Mr. Sowden stated in 2002 that he had been designated as a recycling center and that anyone in Middlesex County could bring their tires to the trailer on his site to be recycled. Mr. Zoller questioned if anyone in authority raised any issues with this.

Ms. Dowling stipulated that in Oct 2014 was the only time he was questioned as to the use of the property.

Chairperson DiMura questioned the trailers at 102 South Ave., how long are these trailers at the site, and how many times do they go out.

Mr. Sowden stated that the trailers could be there from overnight to a week to a month. He stated that the trailers leave when they are full and bring back when empty.

Chairperson DiMura questioned how many times a trailer goes in and out from the site.

Mr. Sowden stated that there are multiple trailers on the lot, at least one trailer leaves once a month, depending on the volume per month it could be three or four in one week that leave and come back.

Mr. Zoller stated that these trailers are the type that tractor trailers truck transport all over NJ .

Member Anello questioned what else was parked at the site.

Mr. Sowden stated that a wrecker and flat bed was parked at 102 South Ave, usually a wrecker is parked inside at 125 South Ave.

Member Thompson questioned the previous statements pertaining to the trailers and not being permanently stored at the site.

Member Anello clarified that the business at 102 South Ave is independent of the business at 107 Egel Ave.

Chairperson DiMura referred to the Planner's Report.

Mr. Uzo Ahairakwe referred to the Planner's Report on page 4 (D). The statement regarding if lot 6 was an accessory use to lot 51(must be on the same lot by ordinance) or if this was a different use because truck storage/depots are not permitted.

Mr. Ahairakwe stated that a site visit had been done and it was observed that traffic enters into lot 51(107 Egel Ave) by using lot 6 (102 South Ave.)

Ms. Dowling confirmed that Mr. Ahairakwe meant that trucks enter 102 South Ave to get access to 107 Egel Ave.

Ms. Dowling stated that 102 South Ave was an access to 107 Egel Ave.

Mr. Ahairakwe questioned the fencing around Block 287 Lot 51, Block 287 Lot 6, Block 287 Lot 18 leading to Member Anello stating that lot 18 is labeled wrong in the key map.

Chairperson DiMura questioned the applicant if trailers are kept on lot 18 for the recycling of tires.

The Board tried to clarify where the dumpsters are located.

Mr. Sowden stated that the dumpsters for lot 51 are located on Lot 18.

Ms. Dowling questioned the applicant if these lots were ever merged, and if lot 18 had any other accessory use to lot 51 besides the dumpsters.

Mr. Sowden stated that it was only the dumpsters.

Ms. Dowling duly swore in Mr. Scott Luthman, 870 Gates Ave. Piscawatay NJ.

Mr. Zoller stated that Mr. Luthman would be a fact witness and stated his employment background.

Mr. Luthman stated that in 2000 he had visited the site and the prior owners used the lot for storage of tractors and trailers. He had been confused by the ordinance so he contacted the former zoning officer, Mr. Kolb regarding the Certificate and they both felt it was a continued use.

Mr. Luthman stated that when he had worked for the Borough, the application for Continued Occupancy was also the zoning application, and he was not sure if the Borough still continues to operate this way.

Mrs. Dowling stated that in 2000 the Ordinance 82-57 in the Industrial zone 82-57 (D) prohibited uses: (7) truck storage truck depots and truck terminal as a principle use.

Mr. Luthman stated what was confusing was what was allowed.

Member Anello clarified that Mr. Luthman stated that prior use approved at 125 South Ave was discussed by Mr. Luthman and Mr. Kolb but this is a different location than the one being discussed.

Mr. Luthman stated he reviewed previous certificates, and reviewed what had been approved on South Ave.

Ms. Dowling questioned Mr. Luthman regarding to what was allowed.

Ms. Dowling and Mr. Luthman reviewed the 2000 Ordinance.

Ms. Dowling questioned where in the Ordinance it allows for truck storage.

Mr. Luthman stated that it does not, that the previous certificate allowed for the truck storage.

Ms. Dowling stated that the previous certificate for 102 South Ave was for the purpose of tank storage.

Mr. Luthman stated that there were only tanks on the left hand portion of the property and was used for a truck storage.

Member Anello stated that the certificate was issued for tank storage anything else was above and behind the realm of the certificate.

Ms. Dowling questioned Mr. Luthman where in Ordinance 82-57 does it allow for truck storage.

Mr. Luthman stated that it allowed for truck storage in section 5.

Ms. Dowling read Ordinance 82-57 section 5.

Chairperson Dimura questioned Mr. Luthman if truck storage was permitted.

Mr. Luthman stated that truck storage was not permitted.

Chairperson DiMura stated on the certificate of continued of occupancy, the use was for tank storage and the Richie's tires was not going to be using the property for tank storage.

Chairperson DiMura stated he felt that it was a truck depot.

The Board discussed truck storage and trailer storage.

Mr. Zoller questioned Mr. Luthman on the use of the property.

Mr. Luthman stated that in addition to the tanks there had been truck storage on the site, there had been back to back trailer, tankers and box trucks.

Mr. Luthman stated even though it was not compliant he based his decision on what the property had been previously approved for and issued a certificate.

Board Members questioned Mr. Luthman on why he did not have the applicant apply for a variance in 2000.

Chairperson Dimura stated that in 1998 the certificate was issued for tank storage, and that in 2000 the certificate of continued occupancy was issued for a storage yard that it was not the same use.

Member Anello stated that tank storage is something set and permanent, not something mobile as trucks.

The Board and Mr. Zoller discussed the tank and the storage on the site.

Ms. Dowling stated from 1953 to 2000 there was tank storage and then in 2000, was a new owner and new use.

Ms. Dowling and Mr. Zoller discussed the deed of the property and the name on the 2000 Certificate of Occupancy and if Mr. Luthman had made any administrative mistake.

Mr. Luthman stated that he made his decision based on the conversation with Mr. Kolb.

Chairperson DiMura clarified that Mr. Luthman stated that originally looked at the property it was a use that was not permitted. Then he had a conversation with Mr. Kolb about the surrounding properties and then he made his decision.

Mr. Luthman agreed with Chairperson DiMura regarding this statement.

Chairperson DiMura stated the Mr. Kolb could have made a mistake and that Mr. Luthman could have had the applicant go to the Board.

Mr. Luthman stated that there had been trucks on the lot and he had felt he had been consistent with the prior uses.

Member Thompson questioned the fact the words parking lot were changed to the storage yard in the official area of the application.

Mr. Luthman explained what could have happened and that the Certificate was issued for a storage yard.

Ms. Dowling entered the application with the cross out as Exhibit A3 (3-18-15).

Mr. Luthman stated that the use is still the same as was issued in 2000.

Mr. Luthman stated that this use of the property is not an accessory use and is the primary use of this property.

Mr. Zoller commented on the Planner's report and gave his summary statement regarding storage on this property.

Ms. Dowling stated that the Board had to review the Ordinance and is the use of the property in keeping with the Ordinance.

Chairperson DiMura asked each Board Member on their decision.

Member Lopa stated that the applicant should come before the Board for a variance for a nonconforming use.

Member Vietri stated that the applicant should come before the Board for a variance.

Member Thompson stated the applicant was using the property for storage of tires, trucks are just a way to move the tires and it was a proper use.

Member Anello stated that applicant should come before the Board for a variance.

Member Johnson stated the applicant was using the property for storage of tires and it was a proper use.

Member Hoyt stated the applicant should come before the Board for a variance.

Chairperson DiMura felt the mistake was made in 2000, and the applicant should come before the Board for a variance.

Ms. Dowling questioned Mr. Thompson and Mr. Johnson where in the Ordinance is storage permitted in the Industrial zone.

Member Thompson stated in section 420-56 section 5.

The Board stated that the use is not a permitted use.

Member Lopa made a motion that the use is not permitted and the applicant should obtain a variance, seconded by Member Hoyt. Vote: Member Anello-yes, Member Hoyt-yes, Chairperson Dimura-yes, Member Vietri -yes, Member Lopa- yes, Member Thompson-no, Member Johnson-no. Motion passed.

7. Professional Contract for Substitute Attorney due to conflict

Member Thompson made a motion to have the Chairperson sign the contract for substitute attorney, seconded by Member Vietri. Vote: Member Anello-yes, Member Hoyt-abstain, Chairperson DiMura-yes, Member Vietri- yes, Member Lopa-abstain, Member Thompson-yes, Member Johnson-yes. Motion passed.

Chairperson Dimura opened the meeting to the public.

John Ellery, 701 Mountain Blvd, Middlesex, Representative of the Business Association. Mr. Ellery stated he would like to have the Zoning Board, Planning Board and the Council on the same page. Mr. Ellery stated that Borough is running businesses out of town. Mr. Ellery stated that small businesses can't afford to go to the Planning or Zoning Board. Mr. Ellery stated he would like to get the Planning and Zoning Board and Council on the same page.

Member Anello stated that Mr. Ellery is accusing the Board Members that said yes of not being nice to businesses. Member Anello stated that they have to follow the ordinances and that the applicant can apply for a variance.

Mr. Ellery stated he is not accusing the Zoning Board Members, that Ordinances need to be updated.

Member Anello stated he appreciates all the business but he had to go by the Ordinances.

Chairperson DiMura agreed that some of Ordinances do need to be redone and that back in 2000 the Zoning Officer had made a mistake and the applicant should have recieved a variance then. Chairperson DiMura stated that they appreciate all the business and have to follow the Ordinances.

Rich Sowden and Kathy Sowden of Richies Tires thanked the members for their time. He stated he felt he should not have been in front of the Board. They stated that they have had problems with DEP clean up and have reached out to town officials to try to resolve this and other issues. Mr. Sowden felt he was targeted by an individual

There being no further business Member Lopa made a motion to adjourn the meeting at 9:56pm,seconded by Member Anello. Vote: All in favor. Meeting adjourned.

Secretary

Clerk